



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
at CHARLESTON**

**AMERICAN FEDERATION OF TEACHERS –  
WEST VIRGINIA, AFL-CIO, JUDY HALE,  
Its President, FREDERICK ALBERT,  
CYNTHIA PHILLIPS and GREGORY DODD,  
members and representatives of similarly  
situated individuals,**

**Petitioners,**

**v.**

**KANAWHA COUNTY BOARD OF EDUCATION,  
KANAWHA COUNTY  
SCHOOLS, and  
RONALD DUERRING, Ed.D., Superintendent,**

**Respondents.**

**Civil Action No. 2:08-1406  
Kanawha Co. Civil Action  
No. 08-MISC-421**

**NOTICE OF REMOVAL**

1. The Respondents, Kanawha County Board of Education, Kanawha County Schools, and Ronald Duerring, Ed. D., hereby remove this civil action from State Court to Federal Court. The above-entitled action was commenced in the Circuit Court of Kanawha County, West Virginia. The Verified Petition for Writ of Mandamus, Declaratory Judgment and Judgment Relief, which was filed in the Office of the Clerk of said Court, was served on the respondents on November 26, 2008, at their offices in Charleston, West Virginia; specifically, the Verified Petition was served on James Withrow, Esquire, the respondents' General Counsel. A copy of all process, pleadings and orders served on respondents is included herewith, in the certified copy of the entire file of the Circuit Court of Kanawha County, attached as Exhibit 1.

2. “Any civil action of which the District Courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.” 28 U.S.C. § 1441(b). Under the “well-pleaded complaint” rule, “a defendant may not remove a case to Federal Court unless the plaintiff’s complaint establishes that the case ‘arises under’ federal law.” *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10, 103 S.Ct. 2841, 2846, 77 L.Ed.2d 420 (1983). The Verified Petition expressly includes claims that arise under federal law.

3. The Petitioners in this civil action seek a writ of mandamus, injunctive relief, and costs and attorneys fees based, in pertinent part, on allegations that:

- a. random drug testing of teachers violates the Fourth Amendment of the United States Constitution; and,
- b. implementation of the respondents’ new drug testing policy violates the provisions of 42 U. S. C. § 1983.

4. As the foregoing shows, the claims in this action are found upon alleged violation of the United States Constitution and arise under the laws of the United States. This Court therefore has original jurisdiction pursuant to 28 U.S.C. § 1331 without regard to the amount in controversy, and the action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) without regard to citizenship or residence of the parties.

5. Federal jurisdiction over certain claims is founded upon this Court’s supplemental jurisdiction, 28 U.S.C. § 1367 because they are so related to claims in this action within the Court’s original jurisdiction that they form part of the same case or controversy.

6. This Notice is filed within thirty (30) days after the Respondents were served with and received copies of Summons and the Verified Petition.

7. This Notice is filed jointly by all of the respondents served at the time of filing of this removal.

WHEREFORE, the Respondents respectfully request that the aforesaid civil action be removed from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia, and that the State Court proceed no further with this action.

Dated this the 9<sup>th</sup> day of December, 2008.

**KANAWHA COUNTY BOARD OF  
EDUCATION, KANAWHA COUNTY  
SCHOOLS, and RONALD DUERRING,  
Ed.D.**

**By Counsel**

**STEPTOE & JOHNSON PLLC**  
Of Counsel

/s/ Jan L. Fox

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of December, 2008, I caused the foregoing "Notice of Removal" to be served on all counsel of record, by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

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